

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
 )  
Interconnection and Resale Obligations ) CC Docket No. 94-54  
Pertaining to Commercial )  
Mobile Radio Services )

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COMMENTS OF THE INFORMATION TECHNOLOGY  
ASSOCIATION OF AMERICA

The Information Technology Association of America ("ITAA"), by its attorneys, hereby responds to the Second Notice of Proposed Rulemaking ("Second Notice") which the Commission issued in the above-captioned proceeding on April 20, 1995.<sup>1</sup> In the Second Notice, the Commission has solicited comment, among other things, on whether it should impose a resale obligation on providers of Commercial Mobile Radio Services ("CMRS") and, if so, how that resale obligation should be crafted so as to maximize the benefits to the public. As set forth more fully below, ITAA urges the Commission to impose a broad resale obligation on CMRS providers and to be wary of any attempts to limit competition by restricting resale. From ITAA's perspective, the public can be best served by policies that promote resale and, thus, competition in the provision of basic telecommunications services.

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<sup>1</sup> See Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Second Notice of Proposed Rulemaking, CC Docket No. 94-54, FCC 95-149 (released Apr. 20, 1995) [hereinafter "Second Notice"].

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## **I. INTRODUCTION AND INTEREST OF ITAA**

ITAA is the principal trade association of the computer software and services industry. Together with its twenty affiliated regional technology councils, ITAA represents 6,000 companies located throughout the United States. ITAA's members provide residential, government, and business consumers with a wide variety of computer services, such as software design and support, systems integration, facilities management, and network-based enhanced services. These latter services include such diverse offerings as computer-aided design and manufacturing, electronic data interchange, information management, transaction processing, and other remote access data processing services.

Although ITAA member companies currently offer their services almost exclusively over wireline facilities, they are investing significant time and money into determining how these services can eventually be distributed to mobile end users. The potential benefits of wireless computer services are enormous. Wireless connectivity will offer consumers the opportunity to use a broad array of advanced computer functionality wherever they are, without regard to whether they are located at fixed work stations. These advanced computer services can be distributed more broadly and more quickly to wireless users if the Commission's policies are designed to foster vigorous competition in the CMRS market. A liberal resale policy is a critical means to that end.

## II. THE COMMISSION SHOULD NOT HESITATE TO ADOPT A LIBERAL RESALE POLICY.

The Second Notice tentatively concludes that a general resale requirement is necessary "because it will serve as an effective means of promoting competition in the CMRS marketplace."<sup>2</sup> The Commission should not be dissuaded from this conclusion. As the Commission has long recognized, resale serves the public interest by putting downward pressure on the rates of facilities-based carriers.<sup>3</sup> If the Commission's experience over the past twenty years demonstrates anything, it is that such downward pressure on rates enhances the public welfare by stimulating the demand for, and broadening the reach of, telecommunications services.


Resale also offers entrepreneurs the ability -- and opportunity -- to extend facilities-based carriers' services to new clientele, and to satisfy niche markets, by adding value to those services. ITAA's member companies are particularly interested in resale for this reason. Entrepreneurial resellers will have the ability and incentive to offer unique computer-friendly applications, tailored to suit the many needs of wireless users. In doing so, they are likely to stimulate the creation of new CMRS markets ahead of their facilities-based competitors.

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<sup>2</sup> Id., ¶ 86.

<sup>3</sup> See Resale and Shared Use of Common Carrier Services and Facilities, 60 F.C.C.2d 261, 265 (1976), on reconsideration, 62 F.C.C.2d 588 (1977), aff'd sub nom. AT&T v. FCC, 572 F.2d 17 (2d Cir.), cert. denied, 439 U.S. 875 (1978) [hereinafter "Resale and Shared Use"]; Regulation of International Accounting Rates, 7 FCC Rcd 559, 559 (1991).

In the past, the Commission has consistently recognized that restrictions on resale violate Sections 201 and 202 of the Communications Act by unjustly discriminating among subscribers of common carrier services.<sup>4</sup> There is no reason why this legal analysis should not also apply to CMRS providers. CMRS providers, after all, are subject to Sections 201 and 202 of the Act. In creating the CMRS classification, Congress authorized the Commission to exempt CMRS providers from certain provisions of Title II, but expressly concluded that "the Commission may not specify [as inapplicable to CMRS providers] any provision of section 201 [or] 202 . . . of this title."<sup>5</sup>

Although the statutory creation of the CMRS classification now offers the Commission an opportunity to assess the extent to which the Commission's past interpretations of Sections 201 and 202 apply to CMRS providers, the logic of the Commission's past policies does indeed apply to <sup>this new class of</sup> CMRS carriers. As the Commission has  noted, its resale policies have successfully frustrated unreasonable price discrimination among cross-elastic services.<sup>6</sup> Similar policies clearly would benefit the CMRS marketplace. Resale would limit the ability of facilities-based CMRS carriers to provide essentially the same service to different classes of users at widely divergent prices. In this sense, wireline, cellular and other CMRS services are essentially indistinguishable, and the rationale for imposing a resale obligation on the former applies equally well to the latter.

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<sup>4</sup> See Resale and Shared Use, 60 F.C.C.2d at 282-85, 321.

<sup>5</sup> 47 U.S.C. § 332(c)(1)(A).

<sup>6</sup> See Second Notice, ¶ 60.

**III. THE COMMISSION SHOULD CLOSELY SCRUTINIZE ANY REQUEST FOR RELIEF FROM THE RESALE OBLIGATION.**

In the Second Notice, the Commission has indicated that technical limitations could make resale infeasible for certain classes of CMRS providers.<sup>7</sup> ITAA recognizes that relief from a resale obligation would be appropriate where the costs of such an obligation outweigh its perceived benefits. More specifically, if resale cannot, as a technical matter, be provided in certain circumstances, it might disserve the public to compel CMRS providers to develop the technical capability to provide resale at the expense of further deployment of their systems.

The Commission, however, should examine the circumstances of CMRS providers closely to ensure that claims of infeasibility are not used merely to mask efforts to limit competition. There should be a strong presumption in favor of resale, and any relief from such an obligation should be defined narrowly and tied to discrete technological obstacles. Moreover, once those technological obstacles can be overcome economically, any relief from a resale obligation should expire.

In this vein, generalized allegations about the infeasibility of resale should not be given credence. Indeed, such claims should raise suspicions that the arguments are intended to limit competition. For example, certain paging and SMR representatives have suggested that a resale obligation is, respectively, unnecessary or unreasonable because of

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<sup>7</sup> See id., ¶ 87.

capacity constraints.<sup>8</sup> Neither assertion -- without more -- justifies relief from the Commission's resale policies.

Although several facilities-based paging companies may exist in a given market, that fact alone does not demonstrate that the additional competition created by resale is unnecessary. By their nature, resellers enhance competition, even in already competitive markets. Since resellers purchase service from facilities-based carriers, their incentive -- like the Commission's -- is to have those facilities-based carriers provide service at cost-based, competitive rates. In markets where capacity is allegedly constrained (as in the SMR market), resellers will have the same incentive and the same salutary impact. In fact, a resale obligation is even more important in an environment characterized by limited capacity, where it will prevent facilities-based carriers from exploiting their limited capacity at their subscribers' expense. The need to promote competition in services marked by limited capacity also requires close scrutiny of claims that resale is infeasible in the provision of air-to-ground services.<sup>9</sup>

For similar reasons, ITAA supports the suggestion that facilities-based carriers should be required to resell their services to other facilities-based carriers.<sup>10</sup> The Commission's goal should be to maximize the number of efficient operators in any given market, be they facilities-based, resellers, or "hybrid" carriers. A universally imposed resale obligation would serve that end. As Allnet has indicated, if a facilities-based carrier chooses

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<sup>8</sup> See id.

<sup>9</sup> See id.

<sup>10</sup> See, e.g., Reply Comments of Allnet Communications Services, Inc., CC Docket No. 94-54, at 10-11 (filed Oct. 13, 1994) (cited in Second Notice, ¶ 70).

not to deploy new facilities in a given region, but to resell its competitor's service instead, that carrier simply is demonstrating that the region already has sufficient capacity.<sup>11</sup> Competition will be maximized when additional demand develops in the region and competing carriers vie to create capacity to meet that demand.

In its Second Notice, the Commission has expressed the concern that such an obligation would reduce licensees' incentives to build out facilities and, thus, reduce facilities-based competition over the long term. ITAA submits that such a concern already is addressed by the Commission's build-out requirements for new CMRS systems.<sup>12</sup> Once licensees have met the Commission's predetermined minimum facilities requirement, market forces, including the demand for resold facilities-based carrier services, should determine when and where new facilities will be built. The alternative -- requiring all facilities-based carriers to direct resources towards building stations to carry their own traffic -- puts an unnecessary burden on carriers. By requiring potentially uneconomic investment, such an alternative would put carriers at greater risk of failure and, ultimately, increase the chances that fewer carriers will survive over the long run. Fewer carriers, in turn, will impair rather than stimulate competition.

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<sup>11</sup> See Second Notice, ¶ 70.

<sup>12</sup> See, e.g., 47 C.F.R. §§ 24.203, 90.167 (imposing license cancellation penalties on licensees that fail to meet build-out requirements).

#### IV. CONCLUSION

For all the foregoing reasons, ITAA urges the Commission to impose a liberal resale obligation on CMRS providers, including the obligation that facilities-based carriers resell to other carriers. The Commission also should grant relief from such an obligation only where carriers can identify discrete technical reasons why resale is infeasible.

Respectfully submitted,

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